

Assembly Bill No. 1699

Passed the Assembly August 30, 2012

Chief Clerk of the Assembly

Passed the Senate August 29, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 50515.2 of, and to add Chapter 3.9 (commencing with Section 50560) to Part 2 of Division 31 of, the Health and Safety Code, relating to affordable housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1699, Torres. Affordable housing.

Existing law authorizes the Department of Housing and Community Development to provide technical assistance to groups and persons with various housing needs and to administer various housing loan programs. Existing law authorizes the department to extend the term of existing multifamily housing loans made under specified programs upon the request of any borrower, subject to certain conditions, as provided.

This bill would authorize the department to extend the term of an existing department loan, subordinate a department loan to new debt, and authorize an investment of tax credit equity under certain rental housing finance programs, subject to specified conditions. The bill would authorize the department to charge a fee to cover its costs related to extending the term of a loan or for processing the restructuring of a loan. The bill would make changes with regard to existing rent subsidies and rents under existing department housing programs, as specified. The bill would require the department, within available resources, to post on its Internet Web site information regarding household incomes and rents for developments approved for restructuring, as specified. The bill would authorize the department to adopt guidelines that are not subject to the Administrative Procedures Act, as specified.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Over the past 30 years, the Legislature has authorized and funded a variety of affordable rental housing development finance programs administered by the Department of Housing and

Community Development, each with its own unique requirements for ongoing operation.

(b) The vast majority of developments funded under these programs have operated successfully, and remain an important source of high-quality, highly affordable units for extremely low income and very low income households. However, even well-managed developments will often need significant renovation, beyond that which can be covered by existing project reserves, and some will run at a deficit that is not sustainable on a long-term basis. As developments age, more and more are likely to fall into this category.

(c) There are decreasing sources of public funding available to cover needed renovations, and to eliminate operating deficits. For at least the next few years, private debt and equity generated through the sale of low-income housing tax credits will likely be the main source of capital for this purpose.

(d) Accessing private debt and tax credit equity sometimes requires restructuring the regulatory restrictions applicable to a development, including increasing rents. Recognizing this, the Legislature previously enacted legislation, Senate Bill 707 in 2007, authorizing the restructuring of regulatory restrictions for some of the oldest developments. This legislation applied only to selected department programs that were active in the 1980s.

(e) Renovation needs have come to light in a number of projects financed under another set of department programs, dating from the early to mid-1990s. To address these needs, authority is needed for a similar restructuring of regulatory restrictions for these projects.

(f) It is the intent of the Legislature that the regulatory restructurings needed to encourage and facilitate renovations and eliminate operating deficits minimize the impact on existing tenants, particularly those with the lowest incomes, and preserve as much affordability as possible.

(g) Rather than have multiple different restructuring programs, it is more efficient to have one program, applicable to all of the department's older programs, with variations only where essential to address unique situations associated with the existing historical programs.

SEC. 2. Section 50515.2 of the Health and Safety Code is amended to read:

50515.2. (a) Notwithstanding any other law, the department may extend the term of an existing multifamily housing loan made by the department under the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735), the Special User Housing Rehabilitation Program established by Section 50670, or the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660) upon the request of any borrower subject to the following conditions:

(1) The borrower shall provide to the department a complete report showing all existing tenants, their incomes, as reported in the most recent annual income certification, and the rents currently charged to each tenant.

(2) The borrower shall agree to an extension of the term of the loan by an additional 55 years from the date of departmental approval. If the department determines that the remaining useful life of a project is less than 55 years, the loan may be extended for the remaining useful life of the project, but not less than 30 years. The department may convert the existing outstanding principal and any accrued interest into the new loan amount. The interest rate on the extended term shall be 3 percent simple interest. All future payments of principal and interest may be deferred except for a percentage of interest equal to the percentage charged in the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675)) for the department's ongoing monitoring and management responsibilities.

(3) The borrower shall agree to amend or replace the existing regulatory agreement to include terms generally equivalent to those used in the Multifamily Housing Program. In addition, the borrower shall agree to replace, amend, or revise any other loan document as necessary to accomplish the purposes of this section.

(4) (A) The borrower shall agree to a rent schedule that ensures that all assisted units are affordable to households earning no more than 60 percent of the area median income and that at least 35 percent of all assisted units shall be reserved for, affordable to, and occupied by, households earning less than or equal to the midlevel target used by the Multifamily Housing Program, unless the department finds both of the following:

(i) That the project income is insufficient to maintain fiscal integrity, as that term is used in the Multifamily Housing Program,

and is insufficient to maintain the rents required under this subparagraph pursuant to the terms of the Uniform Multifamily Regulations, or any successor regulations, except that commercial vacancy loss shall be projected based on the operating history of the project, commercial vacancy rates in the neighborhood, and similar factors typically used by commercial lenders.

(ii) That the borrower has exhausted all available potential sources of rental subsidies, including, but not limited to, federal, state, and local funds.

(B) If the department finds that a reduction in the percentage of assisted units to less than 35 percent of assisted units is justified, it shall ensure that the largest possible percentage is reserved for the targeted households.

(C) For the purposes of this paragraph, “midlevel target used by the Multifamily Housing Program” shall mean the following:

(i) For counties with an area median income of 110 percent or less of the state median income, it shall mean households earning 30 percent of state median income, expressed as a percentage of area median income.

(ii) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean households earning less than 35 percent of state median income, expressed as a percentage of area median income.

(5) No tenant residing in a project at the time of an extension authorized by this section may be displaced as a result of the regulatory revisions authorized by this section, and, for the initial operating year after approval of the extension, that tenant may not have his or her rent increased above the amounts specified in his or her preexisting regulatory agreements, except that no tenant may pay less than 30 percent of his or her income, calculated pursuant to the Multifamily Housing Program criteria. If a rent increase authorized under this section would exceed a 10 percent increase in payment for a lower income tenant, the project owner shall phase in the increase so that it does not exceed 10 percent per year. After the initial operating year after the extension authorized under this section, the rents for all regulated units that are subject to the new agreement may be adjusted in the percentage calculated pursuant to the Multifamily Housing Program criteria, plus the amount necessary to bring an individual tenant up to the 30-percent-of-income standard, provided that the total annual

increase does not exceed 10 percent. Rent adjustments for all tenants occupying assisted units at the time of the extension shall be based on the tenant's initial rent established under this paragraph. Upon vacancy of an assisted unit occupied at the time of the extension, the new base rent for that unit shall be established consistent with the standards used in the Multifamily Housing Program for the regulated income band, subject to the reservation of units required under paragraph (4).

(b) The department may approve an extension of a loan made by the department if it determines that the project has, or will have after rehabilitation or repairs, a potential remaining useful life of at least 30 years and that the project is deemed financially feasible pursuant to the terms of its Uniform Multifamily Regulations or successor regulations.

(c) The department may subordinate its loan or loans to refinance existing senior debt and to additional permanent financing if that additional senior debt is used only for rehabilitation, repairs, or improvements, or both, including related soft costs, that are modest in size, scope, and cost, as determined by the department and necessary to maintain and extend the useful life of the project.

(d) (1) For the purposes of this subdivision, the "agency projects" are the 26 projects assisted through the original Rental Housing Construction Program with funds administered by the California Housing Finance Agency.

(2) Upon the request of a borrower the agency may extend the term of an existing loan for an agency project by a period that is equal to the remaining useful life of the project, as determined by the agency, but not more than 55 years and not less than 30 years from the date of agency approval, under terms that are substantially consistent with the purposes of this section, if all of the following conditions are met:

(A) The borrower shall provide to the agency the report described in paragraph (1) of subdivision (a).

(B) The extension shall be subject to the conditions set forth in paragraph (2) of subdivision (a).

(C) The rent levels and tenant protections described in paragraphs (4) and (5) of subdivision (a) shall be satisfied, except that the agency, not the department, shall make the determination required under clause (i) of subparagraph (A) of paragraph (4) of

subdivision (a) that the project income is insufficient to meet the agency's affordable multifamily lending program requirements.

(3) Any determination or approval under this section regarding the agency projects shall be by the agency rather than the department.

(4) The borrower and the agency shall amend, replace, or revise any other loan documents or agreements governing the loans for the agency projects as necessary to accomplish the purposes of this section.

(5) All funds received by the agency for the agency projects, whether by loan repayment, foreclosure, accrued interest, or otherwise, shall be used to provide assistance to existing or future projects financed by or through the agency pursuant to terms consistent with the agency's affordable multifamily lending programs.

(e) It is the intent of the Legislature in enacting this section that the department should manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of current benefits to current low-income tenants for the longest period of time possible. Accordingly, rent subsidies shall be continued only for units occupied by lower income tenants who were in residence at the time of the extension authorized under this section.

(f) It is the intent of the Legislature in enacting this section to provide to the department the flexibility necessary to preserve the affordable rental units for which the state has already made a significant public investment. Accordingly, the department may implement this section through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

(g) This section shall become operative on July 1, 2008.

(h) This section shall not apply to loan extensions and senior debt subordinations executed by the department and recorded after the effective date of the guidelines adopted by the department pursuant to subdivision (h) of Section 50560.

SEC. 3. Chapter 3.9 (commencing with Section 50560) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 3.9. PORTFOLIO RESTRUCTURING

50560. (a) Subject to the requirements of this chapter, the department may approve an extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity under one or more of the following rental housing finance programs: the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735), the Special User Housing Rehabilitation Program established by Section 50670, the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660), the rental component of the California Natural Disaster Assistance Program established by Chapter 6.5 (commencing with Section 50671), the State Earthquake Rehabilitation Assistance Program established by Chapter 6.5 (commencing with Section 50671), the rental component of the California Housing Rehabilitation Program established by Section 50668.5, the component of the Rental Housing Construction Program funded with bond proceeds governed by Section 50771.1, the Family Housing Demonstration Program established by Chapter 15 (commencing with Section 50880), and the Families Moving to Work Program established by Chapter 15 (commencing with Section 50880).

(b) Once the department has approved a loan extension, subordination, or tax credit investment pursuant to this chapter, the statutes enumerated in subdivision (a), and the regulations promulgated pursuant to these statutes, shall no longer apply to developments restructured pursuant to this chapter. These developments shall instead be governed by this chapter and guidelines adopted pursuant to subdivision (h).

(c) All projects restructured pursuant to this chapter shall comply with the affirmative marketing and language accessibility requirements set forth in Section 50736 of this code and Section 65863 of the Government Code.

(d) The department may approve an extension of a loan, the subordination of a department loan to new debt, or an investment of tax credit equity if it determines that the project has, or will have after rehabilitation or repairs, a potential remaining useful life equal to or greater than the term of the restructured loan.

(e) The department may subordinate its loan to refinance existing senior debt only as necessary for project feasibility and to reimburse borrower advances for predevelopment costs, recent capital improvements, and recent operating deficits.

(f) If the extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity will result in a rent increase for tenants of a development, the department may only subordinate a loan to senior debt if necessary to increase the feasibility of a project and to fund reasonable rehabilitation or improvements including soft costs. The application to refinance shall include a third-party analysis that supports the need for refinancing.

(g) The department may approve additional senior debt only as necessary to finance rehabilitation or repairs, including soft costs, that are modest in size, scope, and cost, as determined by the department.

(h) It is the intent of the Legislature in enacting this chapter to provide to the department the flexibility necessary to maintain the quality of the affordable rental housing units for which the state has already made a significant public investment. The department may implement this chapter through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. These guidelines shall be developed through the following process:

(1) The department shall provide a notice of proposed action as described in Section 11346.5 of the Government Code to the public at least 21 days before the close of the public comment period.

(2) The department shall schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period.

(3) The department shall maintain a rulemaking file as described in Section 11347.3 of the Government Code.

(4) The final version of the guidelines shall be accompanied by a final statement of reason as described in subdivision (a) of Section 11346.9 of the Government Code.

(5) The rules and guidelines shall be effective immediately upon adoption by the department.

50561. (a) The department may approve an extension of an existing rental housing development loan, the subordination of a department loan to new debt, or an investment of tax credit equity

as long as the rental housing development is being operated in a manner consistent with the regulatory agreement and the development requires an extension in order to continue to operate in a manner consistent with this chapter. Each extension shall be for a period of not less than 10 years and each extension shall not exceed 55 years, or 58 years if needed to match the term of tax credit restrictions. The interest rate shall be 3 percent simple interest. All loan payments shall be deferred for the full term of the loan, except for residual receipts payments. These residual receipts payments shall be structured to avoid reducing the amount of payments on local public agency loans resulting solely from changes in the payment terms on the department's loan, and not resulting from fees or other payments to the borrower, and shall otherwise be consistent with the provisions of the department's Uniform Multifamily Regulations or successor regulations. The department may charge a monitoring fee to cover the aggregate monitoring costs it incurs in years that the loan is extended and charge a transaction fee to cover its costs for processing restructuring transactions. The department may waive or defer some or all fees, if it determines that a particular development or class of developments does not have the ability to make these payments. In determining the fees and payments to be charged, the department shall seek to share monitoring activities with other regulatory agencies and to minimize the impact on tenants with the lowest incomes and on the capacity of the developments to support private debt or secure tax credit investments.

(b) To the minimum extent necessary to support new debt to pay for rehabilitation, rents for assisted units in these developments may be adjusted. This rehabilitation shall be determined by the department to be demonstrably necessary, based on third-party assessment and on the department's own inspection. Assisted units in developments with a specific, department-approved plan to undertake the necessary rehabilitation, at a level that equals or exceeds the minimum per-unit rehabilitation cost standards under the low-income housing tax credit program, may be adjusted as follows:

(1) For developments originally financed under the bond-funded component of the Rental Housing Construction Program pursuant to Section 50771.1, and the Family Housing Demonstration Program, rents may be increased up to a maximum of 30 percent

of 60 percent of area median income, for units designated in the development's original regulatory agreement as lower income units, and up to a maximum of 30 percent of 35 percent of area median income, for units designated in the development's original regulatory agreement as very low income units.

(2) For developments originally financed under other programs, rents for at least 35 percent of the assisted units, or as specified in the original regulatory agreement governing the development, whichever is greater, shall be restricted to the midlevel target used by the Multifamily Housing Program. Rents for the balance of the assisted units may be increased up to a maximum of 30 percent of 60 percent of area median income. For purposes of this paragraph, "midlevel target used by the Multifamily Housing Program" shall mean either of the following:

(A) For counties with an area median income of 110 percent or less of state median income, it shall mean 30 percent of 30 percent of state median income, expressed as a percentage of area median income.

(B) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean, 30 percent of 35 percent of state median income, expressed as a percentage of area median income.

(c) Rent increases for tenants living in assisted units at the time of restructuring pursuant to this chapter shall be limited as follows:

(1) For existing tenants with incomes not exceeding 35 percent of area median income, increases shall be limited to 5 percent per year, until the rents reach the levels set under subdivision (b).

(2) For existing tenants with incomes exceeding 35 percent of area median income, increases shall be limited to 10 percent per year, until they reach the levels specified in paragraphs (1) and (2) of subdivision (b) of Section 50561.

(3) It is the intent of the Legislature that rent increases for existing tenants authorized by this subdivision shall not be greater than necessary to ensure the financial feasibility of the project. The projected maximum rent for tenants in assisted units, as determined by subdivision (b), shall not exceed 50 percent of the household's actual income. This requirement shall be applied using maximum rent levels and household incomes determined at the time of restructuring or at the time of the department's approval of the restructuring.

(4) If the refinance of a loan results in a rent increase, the project sponsor shall provide tenants with the following notifications:

(A) Notice six months prior to the scheduled rent increase with an estimate of the amount of the increase.

(B) Notice 90 days prior to the actual increase with the exact amount of the new rent.

(d) If existing tenants move, the rent for these units may be increased immediately up to the level specified in paragraphs (1) and (2) of subdivision (b). The income limit for new tenants shall correspond with the rent limit set pursuant to paragraphs (1) and (2) of subdivision (b).

(e) Once rents achieve the levels set forth in paragraphs (1) and (2) of subdivision (b), income levels and rent limits shall be calculated consistent with the calculation methodology used under the Low Income Housing Tax Credit program and the Multifamily Housing Program, and rent increases shall be based on increases in the area median income.

(f) Eligible households displaced as a result of rehabilitation pursuant to this section shall be accorded first priority in occupying comparable units in the development from which they were displaced, subsequent to rehabilitation. Tenants of rental housing developments repaired with assistance provided under this chapter who are temporarily or permanently displaced as a result of rehabilitation or other repair work, shall be entitled to relocation benefits pursuant to, and subject to, the requirements of Section 7260 of the Government Code. Sponsors of assisted rental housing developments shall be responsible for providing the benefits and assistance. The costs of the benefits and the assistance provided to tenants shall be eligible for funding by a loan provided pursuant to this section.

(g) The guidelines adopted by the department pursuant to subdivision (h) of Section 50560 shall be patterned after the regulations governing the Multifamily Housing Program, including the Uniform Multifamily Regulations, except that the department may adopt different standards for the following factors:

(1) Commercial vacancy loss assumptions must reflect project operating history.

(2) Debt service coverage ratios.

(3) Payment terms and principal amount of senior debt, considering financial market conditions, including costs and department risk, as determined by the department.

(4) Developer fee limitations shall be consistent with California Tax Credit Allocation Committee regulations for inclusion in the basis for projects receiving 9 percent tax credits, for projects receiving the special rent increases contemplated by this chapter, and, consistent with the requirements of other funding sources, for projects not receiving special rent increases.

(5) Replacement reserve deposit amounts must be based on projected costs over 20 years, adjusted for inflation, and as shown in an independent replacement reserve analysis.

(h) It is the intent of the Legislature in enacting this section that the department shall manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of benefits to current low-income tenants for the longest period of time possible up to the term of the original regulatory agreement or the depletion of the annuity funds, whichever occurs first. Accordingly, rents for those households in units subsidized by the annuity fund established pursuant to Section 50748 may be increased to 30 percent of household income. Any household affected by the rent increase permitted by this subdivision shall be given at least 90 days advanced notice of the increase.

(i) (1) The department shall, within available resources, post on its Internet Web site information regarding household incomes and rents for developments approved for restructuring.

(2) The information shall be provided within six months of a restructuring and, thereafter, no less than every three years.

(3) The information shall include the following or similar information:

(A) The monthly rent of each household at the time of restructuring.

(B) The current monthly rent of each household.

(C) The annual income of each household as a percentage of area median income at the time of restructuring.

(D) The current income of each household as a percentage of area median income.

50562. (a) If a department loan is extended or subordinated, or if a new tax credit investment occurs, the department shall enter

into a new regulatory agreement with the development's owner, or amend the existing agreement. The agreement shall be binding upon the development's owner and successors in interest upon sale or transfer of the development property, regardless of any prepayment of the loan. The agreement shall be recorded in the office of the county recorder in the county in which the development is located. The new or amended regulatory agreement shall:

- (1) Set standards for tenant selection to ensure occupancy by the eligible households.
- (2) Govern the terms of occupancy agreements.
- (3) Restrict rents for assisted units, consistent with this chapter.
- (4) Provide for periodic inspections by the department.
- (5) Require occupancy and financial reports, and financial audits for the development.
- (6) Govern the use of operating income for the development.
- (7) Govern the use of reserves for the development.
- (8) Have a term for not less than the term of the loan, including any extension.
- (9) Include other provisions necessary to carry out the purposes of this chapter.

(b) The development's owner shall agree to replace or amend any other loan document to accomplish the purposes of this chapter.

50563. (a) Sections 50560 and 50562 shall apply to the restructuring of loans for group homes, except as modified in this section.

(b) The department may approve an extension of a department loan at the end of the current loan term to an existing owner of a group home, as long as the group home is being operated in a manner consistent with the regulatory agreement and the group home requires an extension in order to operate in a manner consistent with this chapter. The extension may be for a period of no less than 10 years and up to 30 years.

(c) The guidelines adopted by the department pursuant to subdivision (h) of Section 50560 may simplify requirements as appropriate to group homes and may include a limitation on occupancy of vacant units or rooms to extremely low-income households, rent limitations appropriate to required income levels, requirements that property be maintained, financial reporting, and other provisions as determined necessary by the department.

(d) Loan terms contained in the existing promissory note shall apply during the period of the loan extension. All unpaid principal and interest shall be due at the end of the extension. However, the department may require periodic payments of principal or interest, or both, during the extension period. If the borrower repays the loan prior to the end of the extension, regulatory requirements shall be removed. As necessary to generate sufficient revenue to cover the cost of processing loan transactions and long-term monitoring of program requirements, the department may also assess loan processing and monitoring fees. This subdivision shall not authorize a rent increase that exceeds 30 percent of the household's actual income, based upon the most recent income certification.

(e) Rent increases for tenants living in assisted units at the time of restructuring pursuant to this chapter shall be limited as follows:

(1) For existing tenants with incomes not exceeding 30 percent of area median income, rent increases shall be limited to 5 percent per year until rents reach the levels for targeted income levels specified in the regulatory agreement.

(2) For existing tenants with incomes exceeding 30 percent of area median income, rent increases shall be limited to 10 percent per year until rents reach the levels for targeted income levels specified in the regulatory agreement.

(f) It is the intent of the Legislature in enacting this chapter that the department shall manage its reserves for the original Rental Housing Construction Program in a manner that will allow for the continuation of benefits to current low-income tenants for the longest period of time possible up to the term of the original regulatory agreement or the depletion of the annuity funds. Accordingly, rent subsidies shall be continued only for units occupied by lower income tenants who were in residence at the time of the extension authorized under this section and rents for those households shall be increased to 30 percent of household income.

50564. (a) Notwithstanding any other law, the department may approve the extension of a loan to an owner who occupies his or her housing unit funded by the department under any of the following loan programs: the owner component of the California Natural Disaster Assistance Act Program established by Chapter 6.5 (commencing with Section 50660), the California

Homeownership Assistance Program established by Chapter 10 (commencing with Section 50775), the owner component of the California Housing Rehabilitation Program established by Chapter 6.5 (commencing with 50668), the owner component of the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660), the owner component of the State Earthquake Rehabilitation Assistance Program established by Chapter 6.5 (commencing with Section 50671), and the owner component of the Mobilehome Park Resident Ownership Program established by Chapter 11 (commencing with Section 50780).

(b) A loan extension for a period of 10 years may be granted when the loan is due if the owner demonstrates that his or her household income is no more 50 percent of area median income, adjusted for family size, or if the department determines that it is not in the department's interest to call the loan due.

(c) Loan terms contained in the existing promissory note shall apply during the period of the loan extension. All unpaid principal and interest shall be due at the end of the extension. However, the department may require periodic payments of principal or interest, or both, during the extension period. If the borrower repays the loan prior to the end of the extension, program restrictions shall be removed. As necessary to generate sufficient revenue to cover the cost of processing loan transactions and long-term monitoring of program requirements, the department may also assess loan processing and monitoring fees.

(d) The department may implement this section through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code.

Approved _____, 2012

Governor